## **Article 5.5: Variances**

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## 5.501 Purpose and Applicability

Variances provide a mechanism for relief from the strict application of the Zoning Code where the strict application will deprive the property owner of privileges enjoyed by similar properties. Variances may be granted with respect to dimensional and performance standards including, but not limited to site dimensions, yards, height of structures, distances between structures, open space requirements, signage dimensions, fences, and walls. No variances from the use regulations of the Zoning Code shall be granted.

### 5.502 Procedures

- A. *Application*. A written application for a variance shall be filed with the Development Services division in accordance with the application procedures set forth in Article 5.2: Common Procedures. In addition to any other requirements specified, applications shall at a minimum include the following:
  - 1. Evidence showing why, due to special circumstances applicable to the property, including its size, shape, topography, location or surroundings, strict application of the zoning ordinance would deprive the property owner of privileges enjoyed by other property owners of the same classification in the same zoning district.
  - 2. Evidence showing that the requested variance will not constitute a grant of special privileges inconsistent with limitations upon other properties in the vicinity and district in which the property is located.
  - 3. Evidence that the special circumstances applicable to the property were or are not self-imposed by the property owner.
  - 4. Evidence showing why granting the variance:

- a. Substantially meets the intent and purpose of the zoning district in which the property is located;
- b. Will not be detrimental to the health, safety, and general welfare of persons living or working in the neighborhood;
- c. Will not be detrimental to the general welfare of the Town; and
- d. Is the least amount of relief necessary to permit use of the property similar to other properties in the district.
- B. *Public Notice*. Public notice shall be provided in accordance with the public notification procedures set forth in Section 5.205: Notice of Public Hearings.
- C. **Staff Report.** The Director shall prepare and transmit to the Zoning Hearing Officer a staff report, including an analysis and recommendation, setting forth any proposed findings and conditions upon which the Hearing Officer may base its decision. A copy of the staff report shall be made available to the public and the applicant prior to the public hearing.
- D. **Public Hearing.** The Zoning Hearing Officer shall conduct a public hearing in accordance with the procedures set forth in Section 5.206: Public Hearing Procedures.
- E. **Action.** The Zoning Hearing Officer shall render a written decision within 10 days of the date the hearing is closed. The Zoning Hearing Officer may approve, approve with modifications and/or conditions, or deny applications for variances.
- F. **Referral to Board of Adjustment.** The Zoning Hearing Officer may, upon review of the facts of the application, determine that the case merits review by the full Board of Adjustment. In such cases, the Zoning Hearing Officer shall prepare a written statement of the reasons for referring the matter to the Board. Staff shall schedule the matter for hearing at the next available Board of Adjustment hearing and submit the Hearing Officer's statement to the Board with the staff report.
- G. *Appeal*. Decisions of the Zoning Hearing Officer may be appealed to the Board of Adjustment pursuant to the procedures set forth in Section 5.2011: Procedures for Appeals.

# 5.503 Required Findings

The Zoning Hearing Officer or the Board of Adjustment, upon referral as provided for in Section 5.502F: Referral to Board of Adjustment, shall only approve a variance after finding that:

- A. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, whereby the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;
- B. Such special circumstances were not created by the owner or applicants;
- C. The variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located; and
- D. The variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general.

### 5.504 Use Variances Prohibited

Neither the Board of Adjustment nor the Zoning Hearing Officer shall approve any changes in the uses permitted in any zoning district or approve any modification of the requirements of the Zoning Code that would have the effect of allowing the establishment of a use not otherwise permitted.

# 5.505 Conditions of Approval

In approving a variance, the Board of Adjustment or the Zoning Hearing Officer may impose reasonable conditions necessary to:

- A. Achieve the general purposes of the Zoning Code or the specific purposes of the zoning district in which the site is located, or to make it consistent with the general plan;
- B. Protect the public health, safety, and general welfare; or
- C. Insure operation and maintenance of the use in a manner compatible with existing and potential uses on adjoining properties or in the surrounding area.

### **5.506** Effective Date

The effective date of the variance shall be the 31<sup>st</sup> day after the approval, unless the action is appealed in accord with the procedures set forth in Section 5.2011: Procedures for Appeals. No building, grading, or construction permit shall be issued until the variance becomes effective.